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BOOK REVIEWS

THE ENFORCEMENT OF INTERNATIONAL LAW THROUGH MUNICIPAL LAW IN THE UNITED STATES, by Philip Quincy Wright. (Urbana: University of Illinois Studies in the Social Sciences, vol. v, No. 1, 1916, pp. 264.)

INTERNATIONAL LAW AND THE GREAT WAR, by Coleman Phillipson. (New York: E. P. Dutton & Company, 1916, pp. xxiv, 407.)

THE NEUTRAL MERCHANT AND CONTRABAND OF WAR AND BLOCKADE, by Sir Francis Piggott. (London: University of London Press, 1915, pp. xvii, 107.)

This war, as has been the case on a smaller scale in every great struggle, has given rise to exhaustive discussions of international law, past, present and future. We frequently hear it said that the unrestrained practices of the conflict going on show international law to be a misnomer, and we hear it said, perhaps more frequently, that when peace is restored international rules will have to be completely rewritten. Both of these statements are half-truths. International rules may not have a *legal* nature, but they have been more honored in the observance than in the breach; and their present apparently moribund character may be attributed to three considerations, neither of which needs to cause despair of the future: the absence in the past of any effective sanction other than self-help or public opinion; the fact that warfare has been so altered—with communications so much more facile, steam supplanting the sail, the relations of neutrals and belligerents materially modified, many more articles of use in warfare—that some of the old rules are no longer applicable; and, thirdly, while this last named consideration permits change, the doctrines of military necessity, announced by one of the belligerents in the present war, sanction reversion to actual barbarism on the part of their naval and military commanders. Nevertheless, breaches of international law in a sense simply demonstrate its existence, and while at the Hague Conferences of the future many important changes will undoubtedly be made, no present task is more profitable than the ascertainment of what the recognized principles are and the causes and character of their violations, so that some scheme may be determined upon to furnish the *sine qua non* of a stable international organization—namely, a collective authority for the enforcement of rules which have been agreed to. The three volumes enumerated above are admirable examples of the utility of this preliminary study and will be briefly commented upon.

Dr. Wright's monograph was probably prepared with little reference to the war. He conceives international law as prescribing rules of conduct for persons and public officers and imposing obligations upon states to enforce them, and proceeds to consider "the rules of municipal law enforced in the United States in pursuance of this international obligation." Thus, he has no difficulty in showing that international law and municipal law are not mutually exclusive; they may prescribe

the same rules, but—with reference to violations of neutrality, for example—the municipal regulation has a criminal penalty, while the international rule requires the state whose citizens have offended, to make reparation to the aggrieved state for not preventing such acts. The subject matter of his monograph falls into four parts: obligations in time of peace; obligations as a neutral toward belligerents; obligations as a belligerent toward neutrals; and obligations as a belligerent toward enemies. The discussion of the extent of these obligations and the manner of their enforcement by municipal regulations is detailed; the author has made an exhaustive study of the literature, and his volume shows painstaking and accurate research which makes readily accessible many important facts. The problem of enforcement is, in the United States, complicated by our dual form of government; Dr. Wright's consideration of this is adequate and accurate. Effective municipal action is of increasing importance; international unions and international administration must rely on state coöperation for effectiveness.

Of a totally different character is Dr. Phillipson's book, which is one of the most elaborate and most learned of the war publications. His aim has been "to give a systematic account from the point of view of international law of most of the questions and incidents that have so far arisen in the Great War." Such a study is as to many problems only preliminary; the exact nature of the violations cannot be definitely ascertained until sometime after the conclusion of the conflict. But the earlier chapters, dealing with the causes of war from a legal point of view, treaty obligations, the nature of the Belgian guarantee, declarations of war, and some of the immediate effects of its outbreak, are in a measure final. As for the vexed and complicated question of trading with the enemy, enemy business undertakings in a belligerent country, and the alien's position in the courts, Dr. Philipson writes accurately; but the conclusions drawn from his review of the cases decided up to the early part of 1915 will have to be modified in the light of subsequent adjudications.

It is impossible here to examine critically any one of the author's subjects, but the scope of his work may be shown by an enumeration of the subjects—other than those already mentioned—which he considers. He deals at length and convincingly with the question of combatants and non-combatants, the law of military occupation and German violations, with particular reference to Belgium. He dismisses the subject of armed merchantmen with three pages, but this was adequate at the time he wrote, in view of the fact that the legality of such armament was practically undisputed, and only the German contentions have given the subject any importance. A very able chapter deals with the German doctrine of belligerent necessity and includes damning quotations from the German War Book and Von Moltke. Other matters treated are methods of warfare, the wounded, the relations of belligerents and neutrals, maritime capture, contraband and blockade.

There is no pessimistic note in the book, and this is stressed by Sir John Macdonell, who contributes a laudatory, but well-deserved introduction. The nations of the world, Dr. Phillipson says, in the future

"must necessarily be bound together more closely by some kind of federal system, subject to a reinvigorated federal law that shall be fortified by sanctions more authoritative and potent than those that have hitherto been applied to safeguard the law of nations"—and the logic of the whole work leads to this conclusion. The volume, while always learned and precise, is never technical and dull, and this and subsequent editions will appeal to an ever widening circle of readers who desire to be informed on the war's legal problems.

Dr. Phillipson's statement of the British defense of their extensions of international law is too brief to be very convincing and it was written before the more recent Orders in Council. But Sir Francis Piggott devotes his volume almost exclusively to the Order of March 11, 1915, and the case he makes out for British restrictions of neutral trade is by far the most convincing that has come to the reviewer's attention. Sir Francis points out that "in the supreme display of sea-power known as 'blockade' we find that the right of the belligerent does, as is inevitable, take the upper hand, and the right of the neutral disappears," and he argues that this principle justifies England's attitude. It is possible for neutrals to trade with Germany only on account of her adventitious land frontiers against neutral powers whose coasts cannot be blockaded, and England asks that neutrals forego this right, which would have been taken away with greater hardships if Germany had been an island, particularly since Germany uses the trade only for military advantage and her own submarine offensive is conducted with no regard for neutral lives or property. Sir Francis insists upon the spirit, rather than upon the bare letter of the rules which have developed, and if his volume, while occasionally flippant, could be read widely in the United States, the American attitude would doubtless become more tolerant; we would come to think of our present benevolent neutrality having a slight basis in law in addition to its firm foundation of sympathy.

LINDSAY ROGERS.

THE VIRGINIA PROHIBITION ACT, by T. B. Benson. (Charlottesville: L. F. Smith and W. F. Souder, Jr., 1916, pp. 197.)

When the Virginia Legislature considered the prohibition measure at its session last year, it was concerned with getting into the act the demands of the prohibition interests and did not try to frame a statute that would be clear and unambiguous. The eighty sections of the law, embodying as they do all that was demanded by the advocates of a dry Virginia, cover thirty-two pages of the session laws, and while apparently they omit no important subjects they are not easily understood. The final word as to conflicting and vague provisions will not be said until the courts have decided a number of cases or the legislature has improved its product.

In the meantime this analysis of the law by Mr. Benson, a writer of authority, will unquestionably prove of great service. The lawyer—not to speak of the interested layman—should find it a *vade mecum* for what